177
~~174~~

IN

The Supreme Court

OF THE

UNITED STATES.

October Term, A. D. 1897.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE AND STATE OF COLORADO,

Petitioner,

vs.

HARRY H. DUDLEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO U. S. CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

P. C. Reid & Co., Printers, 1409-11 Lawrence St., Denver.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1897.

To the Honorable Supreme Court of the United States, and the Judges thereof.

Comes now the Board of County Commissioners of the County of Lake and State of Colorado, and petition this honorable Court for a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause therein lately depending, entitled Harry H. Dudley, plaintiff in error, vs. The Board of County Commissioners of the County of Lake and State of Colorado, defendant in error, and in which said cause a decision was by the said Court heretofore, and at the December term, A. D. 1896, thereof, duly entered, reversing the judgment of the Circuit Court of the United States for the Eighth Judicial Circuit, in and for the State and District of Colorado theretofore rendered in said cause, all of which more fully appears in the record of the proceedings in said cause, in said United States Circuit Court of Appeals.

II.

That this application is made under the terms and provisions of Section 6 of the act of Congress of March 3, 1891, and entitled an act to establish

a Circuit Court of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes.

III.

That the plaintiff in error filed its complaint in said cause in the Circuit Court of the United States for the District of Colorado on, to wit, the 31st day of March, A. D. 1892, and in and by said complaint he declared that he was a citizen and resident of the State of New Hampshire, and that your petitioner, as defendant, was a corporation organized under the laws of the State of Colorado, and was authorized to create indebtedness for the purpose of erecting necessary public buildings, after having submitted at a general election the question of incurring such debt to the legal qualified electors of said county who had paid a tax on the property assessed to them therein for the preceding year; that the defendant in due time, form and manner submitted the question of incurring the debt evidenced by the bonds and coupons thereinafter mentioned at the general election, legally called and duly held in said county on the 7th day of October, 1879, and that the majority of all the legal ballots then cast were in favor of such indebtedness; whereupon, the defendant, on the 31st day of July, 1880, caused to be made certain bonds, a copy whereof was set forth in said complaint, as being one of a series of $50,000, which the Board of Commissioners of said county had issued for the purpose of erecting necessary public buildings, by virtue of and in compliance with

a vote of a majority of the qualified voters of said county at said election, and under and by virtue of and in compliance with an act of the General Assembly of the State of Colorado, approved March 24, 1877, it being thereby certified that all the provisions of said act had been fully complied with by the proper officers in the issuing of said bonds. That said complaint further alleged that to each of said bonds were attached coupons for annual interest accruing thereon, payable on the 1st of April of each year during the life of such bonds; that on July 31, 1880, the defendant, your petitioner, made, executed, sold and delivered said $50,000 in bonds to sundry *bona fide* purchasers thereof, they having been duly signed by the proper officers and attested by the seal of said county, and the coupons to the said bonds having been also duly executed; that the County of Lake from July 31, 1880, until April 1, 1884, paid the interest on said bonds in accordance with the terms thereof and of the coupons thereto attached, but afterwards made default upon the payment of all coupons maturing between said 1st day of April, 1884, and the commencement of said suit; that plaintiff is the owner and holder of coupons numbered 4, 5, 6, 7, 8, 9, 10 and 11 of said bonds, the principal of said matured coupons then being $26,500; and the plaintiff avers that he became a purchaser of said coupons before the suit for a valuable consideration paid by him, and without notice of any claim at law or in equity affecting their value.

IV.

Your petitioners further declare that afterwards and on, to wit, the 13th day of June, 1892, it filed its answer to the said complaint in and by which it put all of the matters and things in said complaint at issue by proper denials, except its municipal character, its payment of interest upon said bonds until the 1st day of April, 1884, and its refusal to pay thereafter. That the defendant, further answering, alleged that the limitation of the aggregrate amount of indebtedness which could lawfully be contracted by it or be an outstanding liability against said county on or before October 7, 1879, had then been reached and exceeded before the pretended debt of $50,000, evidenced by the bonds mentioned in said complaint, and the interest thereon was submitted to or voted upon by the voters of said county qualified to vote thereon. And as a further answer and defense your petitioners therein alleged that notwithstanding the said question of the contraction of said indebtedness was submitted to the qualified voters of said county on October 7, 1879, yet none of said bonds were issued, or authorized to be issued, prior to July 31, 1880, that being the date expressed in said bonds, and that the assessed valuation of the property in Lake County, in and for the year 1880, was $11,126,489, and the aggregate amount of the indebtedness of said county, contracted or incurred prior to July 31, 1880, and on said date existing and outstanding, was $235,801.39. That in the year 1880 the aggregate amount of debt or liability

which the county might lawfully contract or incur or permit to be outstanding by submitting the question thereof to the voters of said county, or in any other manner, or for any other purpose whatsoever, was limited by Section 6, Article X. of the Constitution of the State of Colorado to not more than $66,758.93, which limit had long before and on the said 31st day of July, 1880, been reached, exceeded and passed, and been so reached, exceeded and passed before said bonds or coupons were executed, transferred or delivered; wherefore your petitioners alleged the said bonds and each of them and the coupons thereon to be null and void. And your petitioner, for further answer, alleged that the said bonds were actually delivered and assigned on or about November 15, 1880, as of July 31, 1880, at which time the indebtedness of the County of Lake, then incurred and outstanding greatly exceeded the amount to which, by the Constitution of the said State, said indebtedness was limited. And your petitioner further alleged in said answer that the coupons complained of and numbered 4 and 5 and aggregating $2,600, presented causes of action, if any, which accrued against the defendant more than six years prior to the commencement of said action, and were, therefore, barred by the statute of limitations. And your petitioner, further answering, alleged as to the said coupons forming the subject of said action, and alleged to have been attached to the said bonds, and representing the amount of annual interest due and payable thereon, that they were in themselves evidences of no part of said assumed or pre-

tended indebtedness, but only represented interest on the principal thereof, and no part or portion of the principal itself. And your petitioner, for a further and additional defense, alleged in said answer that by Sec. 448 of the General Laws of the State of Colorado of 1887, then in force, it is provided that the submission of the question of incurring an indebtedness for the erection of public buildings, etc., to a vote of the people shall not be made or had, if, at the time thereof, the aggregate amount of the indebtedness of the county, exclusive of debts contracted prior to July 1, 1876, in counties in which the assessed valuation of property should be less than five millions and more than one million dollars, should equal twelve dollars on each thousand dollars thereof, and that at the time of the proposed submission of said question of indebtedness to the said voters of said County of Lake, and at the time of said election on October 7, 1879, the assessed valuation of the property of Lake County was $3,485,628, and at said time the aggregate amount of indebtedness of the said county, exclusive of any and all debts contracted prior to July 1, 1876, was more than twelve dollars on each thousand dollars of said valuation, by reason whereof the action of the said Commissioners in submitting said question of the creation of said indebtedness to the vote of said qualified electors, and the action of the said electors in voting thereon, and the action of the Commissioners in issuing bonds upon such vote, were and each of them was null and void.

V.

That afterwards and on or about the 2d day of December, 1893, the plaintiff caused to be filed a replication to the said answer, denying each and every allegation therein contained.

VI.

That afterwards and to wit, on the 7th day of January, A. D. 1896, the same being one of the days of the regular November term, A. D. 1896, of said Court, the said cause came on to be heard before the said United States Circuit Court for the District of Colorado, and a jury therein impaneled, whereupon the said jurors, having heard the evidence produced therein, and the instructions of the Court, found the issues therein joined for the defendant, whereupon it was considered by the Court that the defendant, your petitioner, go hence hereof without day, and have and recover from the said plaintiff its costs to be taxed, and have execution therefor.

VII.

That thereafter such proceedings were had in said cause by the said plaintiff, that a writ of error issued from the Circuit Court of Appeals for the Eighth Judicial Circuit to the said Circuit Court of the United States for the District of Colorado, by reason whereof the record of said cause was certified to said Court, and the same came on for hearing upon errors assigned to the record therein by the said plaintiff in error, and afterwards

and at the December term, A. D. 1896, of said Court, the same was duly submitted to the consideration of the said honorable Court.

VIII.

That afterwards and during said term, and to wit, on the 12th day of April, A. D. 1897, the said Court, by its judgment, reversed the judgment of the said United States Circuit Court for the said District of Colorado, and remanded the said cause for a new trial, one of the Judges of said honorable Court, to wit, the Hon. Amos M. Thayer, then and there dissenting. And thereby your petitioner declares that the said judgment theretofore by it obtained in said Circuit Court of the United States for the District of Colorado was set aside and for naught held.

IX.

Your petitioner further alleges that at the trial of said cause, before the said Circuit Court of the United States for the District of Colorado, it appeared and appears, from the evidence, that in the year 1879 the assessed valuation of the County of Lake was $3,485,628, and for the succeeding year $11,126,489; that the indebtedness of said county, as represented by outstanding warrants on June 30, 1879, was $33,432,98; on October 7, 1879, $58,382.46; December 31, 1879, $86,146.86; June 30, 1880, $209,897.55; and December 31, 1880, $362,683.23; and that the amounts between these dates regularly increased. It also appears that the extreme constitutional limit of indebtedness

which the county could reach was at all these times less than the amount of the debt actually incurred, so that at the time the bonds in controversy were voted, and when they were issued, the floating indebtedness of the county had already passed beyond the constitutional limit. It also appeared that the bonds from which the coupons were detached had been issued to or purchased by one E. W. Rollins, who at the time informed himself of existing conditions, and who upon such information, personally acquired, believed them to be valid. It also appeared that the bonds and coupons in suit were assigned or attempted to be assigned to the plaintiff by the owners thereof, by bills of sale and assignments executed in 1884-5, but that the defendant was ignorant of the fact, and never saw the bills of sale or assignments until December, 1894. It also appears that he never had, and, with one possible exception, never saw the bonds or the coupons, never had them in his custody for a moment, never paid any consideration whatever for them, never incurred any liability concerning them, and expected, in the event of success, to pay over the proceeds, less the expense of litigation, to the owners thereof. It also appeared that a record of the indebtedness of said county was kept, under the provisions of the act concerning counties, under which the bonded indebtedness was incurred. This record consisted, first, of a semi-annual statement, recorded in a book kept for that purpose; second, of a warrant registry, and, third, of a bond register—all of them being public documents, subject at all times to

public inspection and containing statements, which the law enjoined upon the public officials to make There was no attempt upon the part of the plaintiff to show that a single individual or corporation ever owning the bonds was a *bona fide* holder, without notice of the facts above stated, nor was any excuse or explanation offered for the remarkable transfer or pretended transfer of the bonds and coupons from the real owners thereof to the plaintiff. Under these circumstances and conditions, the honorable Judge of the Circuit Court of the United States for the District of Colorado directed a verdict for the defendant, in doing which the said Court of Appeals has determined that error was committed, and reversed the judgment accordingly.

X.

Your petitioner further represents that the said action grows out of and depends upon a construction of Section 6, Article XI. of the Constitution of Colorado, which declares that "No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges, and such indebtedness, contracted in any one year, shall not exceed the rates upon the taxable property in such county following, to wit: Counties in which the assessed valuation of the taxable property shall exceed $5,000,000, $1.50 on each thousand thereof; counties in which such valuation shall be less than $5,000,000, $3 on each $1,000 thereof, and the aggregate amount of in-

debtedness of any county, for all purposes exclusive of debts contracted before the adoption of this Constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of increasing such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt, but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not exceed twice the rate upon the valuation last herein mentioned: Provided, that this section shall not apply to counties having a valuation of less than $1,000,000." And your petitioner further represents that said action grows out of the provisions of certain sections of an act of the State of Colorado, entitled an act concerning counties, county officers and county governments, and repealing laws on those subjects, approved March 24, 1877.

XI.

Your petitioner further alleges that in the statement accompanying the opinion of the said United States Circuit Court of Appeals in said cause, and prepared by the said Court, it is, among other things, declared that "the bonds have since within one year of their issue been held and owned by purchasers for full value, without actual notice of

any illegality or infirmity in said bonds," although your petitioner alleges that there is nothing in the record of said cause which sustains the said declaration, directly or indirectly; that the said statement also contains the following: "There was no evidence in the case that any such semi-annual statement made by the Board of County Commissioners for said County of Lake, at the January or July sessions of said Board in the year 1880, had ever been entered of record in any book kept for that purpose only, as required by said act, and that the fair inference of said testimony is that no such record was ever made."

And your petitioner respectfully avers that the testimony contained in the record relative to the making and recording of such statements does not warrant the inference or statement thus made, but, on the contrary, establishes *prima facie* the making and record of said statements as required by law.

Your petitioner, therefore, respectfully complains that great and manifest error appears in said decision as to each and every proposition by it announced, as hereinafter recited, and as appears therein, and it alleges for such errors the following:

1. The misconception by said honorable Court of the facts heretofore recited from the statement accompanying the said opinion forms the basis thereof, and without such misconception or misstatement of said facts the said opinion can not be supported; for if, as your petitioner contends, there is no evidence whatever in said record of the ownership of said bonds and coupons for

full or any value, without actual notice of their illegality or infirmity, or if, as a fact, it appears *prima facie* that the records of the indebtedness of said county were kept as required by law and open to the public inspection, the plaintiff had no right to recover, unless, independent of such facts, it should appear that the county was not indebted to the extent of the constitutional limitation, or that its assessed valuation was not as proven by your petitioner at the trial.

2. The said honorable Court of Appeals erred in the statement of its first proposition in said decision, to wit: "That plaintiff, by the delivery to him of the coupons and written assignments thereof, became the legal owner of such coupons and entitled to maintain an action upon them, whether he had actually paid the former owners any consideration for them or not. Holding them by valid written transfers from former *bona fide* holders for value, he succeeded to all rights of such former holders. No defense is pleaded which makes it material whether the plaintiff, under such circumstances, did or did not pay value for the coupons."

Your petitioner reiterates that no evidence of *bona fide* ownership of said bonds by any of the owners thereof was introduced; that it does appear from said record that the plaintiff does not hold said bonds by valid or other written transfers from any persons, or that he ever held them or owned them at all. The decision of the said Court is erroneous, not only for the reasons aforesaid, but because the same is at variance and in

conflict with the opinion of this honorable Court in Lytle vs. Lansing, 147 U. S., 59, and establishes a rule of procedure concerning parties for said Court which is not recognized or approved by this honorable Court or justified by the laws of the United States.

The defense pleaded by your petitioner directly puts in issue the *bona fides* of the plaintiff's ownership. He alleges that "he became the purchaser of said coupons before this action, for a valuable consideration paid by him, and without notice of any claim at law or in equity affecting their validity."

The defendant, your petitioner, answering thereto, says that, as to this allegation, "it has not and cannot obtain sufficient knowledge or information upon which to base a belief." This form of denial is authorized by the Colorado Code of Procedure, Section 56, as to all allegations not presumably within the knowledge of the defendant, and puts such an allegation directly in issue.

3. The said honorable Court erred in the second subdivision of its said opinion, because in considering Section 6 of Article XI. of the Constitution of Colorado it declares that, "under the act of March 24, 1877, of the General Assembly of Colorado, there was necessarily intrusted to the Board of County Commissioners the power and duty of determining whether the proposition to create an indebtedness was carried at the election, and the ascertainment of the fact that the aggregate amount of all forms of county indebted-

ness was within such amount that it would not by the issue of the bonds be made to overpass the prescribed limitation; hence, except for the provision contained in Section 30 of the same act, requiring the Board to make and publish the semi-annual statements of indebtedness and financial condition of the county, and requiring the Clerk of the Board to record such statements in a book to be kept for that purpose only and to be open to public inspection, the recitals in the bonds above quoted would be conclusive, and would estop the county in a suit by a *bona fide* holder of the bonds or coupons.

Your petitioner respectfully submits that this determination overrides the constitutional provision involved, makes its limitations secondary to an act of the Legislature passed thereunder, and wholly disregards the construction given heretofore to the said section of the Constitution by this honorable Court in the various cases which have by it been decided and involving such construction; it also [illegible] es and confirms the power of the Board of [illegible] Commissioners to determine and declare the amount of the indebtedness of the county notwithstanding such indebtedness is made matter of record, and constitutes a fact wholly independent of such determination. It also overlooks or disregards that provision of the constitutional section above quoted, which makes the record of assessed valuations binding and conclusive upon all bondholders, *bona fide* or otherwise, and which, together with any bond of the series, would indicate by a mathematical calculation the

extent of the indebtedness which could by the County of Lake be incurred.

4. The said honorable Court erred in its conception and construction of the decision of this honorable Court in the case of Sutliff against Lake County, 147 U. S., 230, and in the application of the doctrine of that decision to this case. The said honorable Court, in its opinion, declares that "In the Sutliff case it was held that as Section 30 of the same act, under which the bonds were issued, made it the duty of the Board of County Commissioners to make out and publish semi-annual statements showing the indebtedness, if any, of the county, and that such statements should be entered of record by the Clerk of the Board in a book to be by him kept for that purpose only, and to be open to the inspection of the public, a person about to purchase bonds was charged with the duty of examining this public record provided for by the very act under which the bonds were issued, and from that inform himself whether the amount of the issue stated in the bonds increased the aggregate indebtedness of the county beyond the constitutional limitation; and that because of such public record of such statements, the county was not estopped to prove that before such bonds were issued the indebtedness of the county had passed the constitutional and statutory limits." Your petitioner contends that the duty here admitted to be upon the bond purchaser to examine such record was never performed, but, nevertheless, the said Court of Ap-

peals declares that your petitioner is liable upon said coupons.

Your petitioner respectfully submits that it was also determined in said Sutliff case that the record of assessed valuation was a record of which purchasers were equally bound to take notice, and that if it appeared from the bond and the record of assessed valuation, or from the bond and the record of such valuation, together with the amount of debt as shown by the semi-annual statement, that the limit of indebtedness had been reached, the bondholder could not recover.

Your petitioner respectfully submits that from the record it appears that a holder of any one or more of said bonds, by comparing the same with the record of assessed valuation, independent of any other record, could, by a mathematical calculation, at once discover the void character of said bonds, but that said requirement is wholly eliminated from consideration by the opinion of said honorable Court.

5. The said honorable Court further committed error in the second subdivision of its said opinion in the following statement:

"In this case it is clearly shown that there never was any such semi-annual statements or record thereof, covering any of the time which could affect the legality of these bonds."

Upon this assumption, the case seems to have been determined against your petitioner—first, because of said assumption; second, because the requirements of the Constitution and the laws concerning the record of assessments were entirely

ignored or disregarded, and third, because the said honorable Court assumed that inasmuch as said semi-annual statements were not kept or recorded, *there was no other record* required to be kept by law as a notice binding upon *bona fide* holders.

Your petitioner respectfully submits that it is clearly shown by the record that such semi-annual statements or some of them were kept, and that other records required to be kept by the same law were equally available to the purchasers and by which it is contended he was equally bound.

6. Your petitioner further respectfully submits that the said honorable Court of Appeals erred in that part of the second division of its opinion which reads as follows:

"As there was no such record in existence as the act required and contemplated, there was no record which the purchaser of these bonds was bound to examine, or which would be constructive notice to him of the aggregate indebtedness of the county when the bonds were issued. Such purchaser was, therefore, entitled to rely on the recitals in the bonds, and as one of the recitals was a certificate that all the provisions of the act had been fully complied with by the proper officers in the issuing of the bonds, and as a provision of that act, limiting the issue of the bonds by the aggregate of all the county indebtedness, was, in effect, identical with the constitutional provision on the same subject, the recital was equivalent to a certificate that this provision of the Constitution had

been complied with, and brings the case within the decision of Chaffee County vs. Potter."

Your petitioner respectfully declares that this decision in effect holds that a Board of County Commissioners, in the face of constitutional as well as statutory prohibitions and in the face of records which are required thereby to be kept, of existing facts, may certify such facts to be otherwise, and such certificate will estop the county, the Constitution and laws thereof to the contrary notwithstanding. This conclusion is not supported by Chaffee County vs. Potter, but is denied by that and by every other decision of this honorable Court, upon the subject.

7. The said honorable Court of Appeals erred in that part of the second division of its said opinion which reads as follows:

"The debt created by the bonds in this case was incurred not at the time the Board of Commissioners determined that it was necessary, nor when the qualified voters of the county gave authority to incur it, nor at the date of the bonds, they having been antedated, but at the date later than September 6, 1880, when the bonds were, in fact, issued and sold. The bonds recite that the whole issue is $50,000, and this recital was notice to the purchasers of the bonds of the creation of an indebtedness of the county to that amount. The assessed valuation of the taxable property of the County of Lake, according to the assessment which was completed by equalization on September 1, 1880, was $11,124,489. This assessed valuation, in view of the vote authorizing the creation of

the indebtedness, would admit of a lawful aggregate of indebtedness of that county to the extent of upwards of $66,000. So that the recited amount of that issue of bonds was not of itself notice to a purchaser that the lawful aggregate limit of indebtedness had been passed, even if such purchaser was bound to take notice of the assessed valuation of the taxable property of the county."

The bonds in suit, although they may have been actually issued subsequent to September 1st, were issued in exchange for others which, prior to that time, and on or before the 31st of July, 1880, had been issued. They were exchanged for some reason satisfactory at the time to the contracting parties. About this fact there is no dispute. Indeed, the bonds bear date July 31, 1880, that being the time when they began to bear interest. The assessment for the year preceding was $3,485,628, and that assessment extended from September 1, 1879, to September 1, 1880; hence, a purchaser of a bond bearing date July 31, 1880, comparing it with the assessment then in force, could easily determine that the total amount of the indebtedness of the county for all purposes which could be then incurred was a trifle over $40,000, and instead of being governed by the assessment for September 1, 1880, would be estopped under the decisions of this honorable Court to question the invalidity of the bonds issued.

8. But the Constitution expressly prohibits counties from incurring a debt by loan in any one year which would exceed $3 per thousand on counties having the valuation of less than five

millions, and a dollar and a half per thousand on counties having a greater valuation. It would, therefore, appear that the said county, even though the said bonds were issued under the valuation of September 1, 1880, would be powerless to exceed for said purpose for that year the sum or amount of $30,000.

9. Your petitioner further respectfully submits that the said honorable Court of Appeals erred in declaring in the second division of its said decision that "the Court below erred in overruling the plaintiff's objections to the County Clerk's account book, the warrant register and the proof of publication of financial statements. None of this evidence was material, as none of it constituted constructive notice to a *bona fide* purchaser of bonds." The fact that semi-annual statements appeared in what was called the County Clerk's account book and that proof of publication of financial statements was offered as covering a part of the time when the bond issue was provided for, indicates that some testimony was offered upon the subject. The warrant register is required to be kept by a provision of the same law under which these bonds were issued, and it is by said law made a public record. If would-be purchasers are bound by the record of semi-annual statements, they are equally bound by the record of the warrant register.

10. Your petitioner respectfully submits that all of the third division of the said decision of the said honorable Court of Appeals is error. The said honorable Court in substance determines in said

part of said opinion that the constitutional restriction of the amount of debt by loan which a county can be allowed to contract in any one year is merely directory, and that your petitioners' contention to the contrary rests upon a misconception of a sentence in the opinion of this honorable Court in Lake County vs. Rollins, 130 U. S., 662–669, the said sentence being:

"Here the matter of indebtedness by loan is completed and the section passes to a broader subject."

The said honorable Court in said part of said opinion also declares that the case of The People vs. May, 9 Colo., 80, does not touch the question of how much indebtedness by loan may be contracted by a county in any one year after authority has been given by a majority vote of the qualified electors to contract the indebtedness.

Your petitioner respectfully submits that the conclusion of said honorable Court of Appeals, as set forth in said part of said opinion, to wit, that "it would be singular, indeed, if, after authorizing a county upon vote of its qualified electors to create a specified indebtedness for the erection of necessary public buildings, the same provision should cripple the power to erect such buildings by requiring that the long-time bonds authorized should only issue and be sold in small annual installments, making the county wait, perhaps, a series of years before getting enough money to warrant it in beginning the erection of necessary public buildings, and be paying, in the meantime, interest on the earlier bonds, the pro-

ceeds of which would be lying idle, awaiting the accumulation of enough to begin with," is palpable and grievous error, and entirely at variance with the said Rollins decision of this honorable Court, and of others upon the same subject. The constitutional section under consideration cannot be so construed as to make the county wait a series of years before getting enough money to warrant it in beginning the erection of necessary public buildings. Fifty per cent of the entire limit is permitted to be raised in any one year, and two years would, therefore, be the limit of time in which such amount could be raised. An entire series of bonds could be issued immediately before and immediately after the commencement of a fiscal year, and the entire sum required could be thus provided for. It is true, as declared by said honorable Court, that this honorable Court in the Sutliff case declared the statute of March 24, 1877, to be in conformity with the Constitution, but it is not true that such legislative construction conforms to the views expressed by the honorable Court of Appeals.

11. The said honorable Court of Appeals further erred, in the fourth division of its said opinion, in declaring that the said County of Lake received full consideration for the bonds; that most of them were taken by the contractor who erected the public buildings for which they were used, or that they passed immediately to *bona fide* holders for full value. Your petitioner has heretofore referred to these considerations.

12. The said honorable Court of Appeals also erred in declaring, in the fourth division of its opinion, that the county acknowledged and ratified said bonds by paying the interest upon them as it matured for several years. Ratification of a void act has never been held in any other Court to give such vitality, and if these bonds were void, because issued without authority, no payment of any part thereof can validate them.

The said honorable Court of Appeals further erred in the fourth division of its said opinion by declaring that if it were conceded that after the Board of County Commissioners of Lake County had been, by a vote of the qualified electors, empowered to create a debt of $50,000 to erect necessary public buildings, they were required to execute that power by issuing not more than $16,500 of the $50,000 in any one year, and they issued the whole $50,000 at once instead of issuing the same in yearly installments, the case would not be one of lack of power to issue all of the bonds, but a case where the power existed, but was irregularly exercised. In such case, the payment of interest on the bonds for several years estops the county from asserting such irregularity as a defense."

If it be true that the Commissioners of Lake County could only issue $16,500 of bonds in any one year, they would have no power to issue more than $33,000 in all, and the issuance of $50,000 in bonds would be void in any event. The case would be one of lack of power to issue all the bonds,

and would not be a case where the power existed, but was irregularly exercised.

Your petitioner respectfully denies that a constitutional prohibition can or should be construed to be something to be disregarded and the disregard of which shall be called a mere irregularity. It respectfully declares that the payment of interest upon its bonds for any time cannot estop the county from asserting a constitutional defense which, if sound, makes the ~~answer~~ a nullity.

Your petitioner respectfully suggests and submits to this honorable Court that, by this said opinion, given by a divided Court, one rule of construction for the validity or invalidity of municipal bonds has been established by the honorable Circuit Court of Appeals for the Eighth Judicial Circuit of the United States, while another and entirely different rule of construction prevails in this honorable tribunal; that the said decision is at variance and in conflict with and disregard of the decisions of this honorable Court in kindred cases from the Town of Coloma vs. Eaves and Dixon vs. Field down to the present time, and that, if the said opinion be permitted to stand as the rule in said honorable Court, bonds, contracts and obligations issued under circumstances, conditions, prohibitions and notice heretofore by this honorable Court held to make them absolutely null and void as against all persons whomsoever, will, in said honorable Court of Appeals, be declared to be valid, binding and enforceable against your petitioner and others, notwithstanding said decisions and declarations of this honorable

Court to the contrary, and that this decision in particular inflicts great, lasting and enormous expense and injury upon the taxpayers of the said County of Lake, your petitioner having refused to pay the interest upon said bonds, by reason and on account of the decisions of the Supreme Court of the State of Colorado and of this honorable Court in kindred cases, involving the same questions.

Your petitioner, therefore, respectfully prays this honorable Court to issue a writ of *certiorari* to said United States Circuit Court of Appeals for the Eighth Judicial Circuit, requiring it to certify to this Court, under Section 6 of said act of Congress approved March 3, 1891, a full, true and complete record of the said cause of Harry H. Dudley, plaintiff in error, vs. The Board of County Commissioners of the County of Lake and State of Colorado, defendant in error, and numbered 821 on the dockets of said Court, with all convenient speed; that this honorable Court will review the same, and determine whether error has been committed by the said Court in its said decision as herein alleged, and also to set at rest and finally determine, among other things, first, whether the said issue of bonds of the said County of Lake on the 31st day of July, 1880, as set forth in said complaint, are valid, lawful and binding obligations upon said county, or whether the same are null and void under the Constitution and laws of said State for want of power to issue the same.

2. Whether the said plaintiff is a *bona fide* or other holder or owner of said bonds or coupons,

or has any right or authority whatsoever to institute, prosecute or maintain the said action or any appeal or writ of error therefrom or thereto.

3. Whether the said decision of said honorable Court of Appeals in said cause is in harmony or in conflict with the decisions of this honorable Court upon the subjects and issues therein involved and presented, and

4. Whether the construction heretofore given by this honorable Court to Section 6, Article XI, of the Constitution of the State of Colorado and of the said legislative act of March 21, A. D. 1887, is or is not binding upon the said honorable Court of Appeals and all other federal tribunals.

And, in duty bound, your petitioner will ever pray.

GEORGE R. ELDER,
C. S. THOMAS,
WILLIAM H. BRYANT,
HARRY H. LEE,
Attorneys for Petitioner.

UNITED STATES OF AMERICA, }
DISTRICT OF COLORADO. } ss.

On this ..... day of ....., A. D. 1897, personally came .....,
who, being first duly sworn according to law, deposes and says that he is the Chairman of the Board of Commissioners of the County of Lake and State of Colorado, the petitioner in the above entitled petition; that he has read the above and foregoing petition for writ of *certiorari* in said cause, and that the matters and things therein set forth are true, according to the best of his knowledge, information and belief.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 177.

THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, PETITIONER,

vs.

HARRY H. DUDLEY, RESPONDENT.

Writ of Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

EXTRACT OF GENERAL LAWS OF COLORADO, 1877, PARAGRAPH 2349, SECTION 110, PAGE 782.

Sec. 2349, Gen. Laws of Colorado for 1877, being sec. 110 of act entitled "An act to provide for the assessment and collection of revenue, and to repeal certain acts in relation thereto," and being sec. 3866, Mills' Annotated Statutes.

"It shall be the duty of the treasurer of each county to make a settlement semi-annually with the board of county com-

missioners at their first meeting in January and July; and the county clerk shall, immediately after such settlements are made, make out a statement upon blanks to be provided by the auditor for that purpose, showing the exact condition of the State revenue in his county; the balance due the State, and of all credits due the county by reason of double or erroneous assessments; and amounts refunded to purchasers of real estate erroneously sold. Said statements shall be authenticated by the county seal, the signature of the county clerk and the majority of the board of county commissioners, and shall be made out in duplicate, one of which the county clerk shall preserve in his office, the other he shall immediately transmit to the auditor."

GEORGE R. ELDER,
C. S. THOMAS,
W. H. BRYANT,
H. H. LEE,
Attorneys for Petitioner.